

Guidelines for Using EPA Form 5700-33H

Every pesticide enforcement cooperative agreement, negotiated between EPA and the state or tribe, must include a work plan, which includes output projections broken down into eleven inspection categories. The work plan must also specify that participating states and tribes are to report back to the Agency, semi-annually, on the actual number of inspections conducted by inspection category, and the resulting enforcement actions, also by standard categories [e.g., civil complaint, criminal action, number of warnings]. EPA Regional Offices are responsible for inputting into the FIFRA and TSCA Tracking System (FTTS) the inspection and enforcement action accomplishments for each state or tribe with a pesticide enforcement cooperative agreement.

EPA Form 5700-33H should be used by states/tribes participating in the FIFRA cooperative agreement program for reporting output projections and accomplishments in the enforcement program. The Accomplishment Report should be accompanied by a narrative portion as described in these guidelines.

To insure uniform reporting, these guidelines and definitions must be followed when completing these forms. Specific guidance on completing the WPS EPA Form 5700-33H is located in Appendix 4a.

A. Reporting Under the Cooperative Agreement

The Environmental Protection Agency strongly encourages states and tribes to provide the Agency with summaries of their **total** yearly pesticide inspection and enforcement accomplishments. The Agency believes that such a total summary will provide a much more accurate picture of both an individual state or tribal inspection and enforcement program, but it will also give a much more realistic national view as well. Total Program Accomplishments includes all activities conducted under the cooperative agreement, including those completed with “state/tribal funds.”

B. Output Projections

Output projections must be submitted in the work plan included with the cooperative agreement application. These numbers represent the state’s/tribe’s annual commitments under the cooperative agreement. EPA Form 5700-33H may be used to report projections.

States should negotiate with their Regional office and commit to conducting an agreed-upon number of federal facility inspections. These would fall under the other categories of inspections listed on the reporting form, but would be conducted at federal facilities. The

number of inspections to be conducted at federal facilities must be negotiated and included in cooperative agreement applications.

States/tribes are not asked to make projections for activities to be conducted outside of the cooperative agreement program.

C. Accomplishments

In order to evaluate performance under the pesticide enforcement cooperative agreement work plan, accomplishments must be reported semi-annually. The accomplishments reported must include inspections conducted, samples collected, and enforcement actions taken. Reports must be submitted to the Regional Office by the state/tribes within thirty calendar days of the mid-point and end of the federal fiscal year. Accordingly, the 5700-33H report is due by April 30 and October 30 of each year.

The following are uniform reporting requirements for reporting accomplishments:

- Inspections should be reported only if an appropriate inspection report is completed.
- The **initial reason** for the inspection **determines** the appropriate inspection **category** for reporting.
- If more than one type of inspection (of the eleven standard inspection categories) is conducted for the same visit, and each inspection is completely documented, then each inspection can be counted as a separate inspection.
- State/tribal enforcement actions resulting from inspections may be reported on Form 5700-33H. This includes enforcement actions for both federal and state/tribal violations.
- Enforcement actions should be reported for the period in which they are **issued**, regardless of when the inspection was conducted.
- Enforcement actions are to be reported under the inspection category heading for the initial inspection which led to the enforcement action.
- Enforcement actions which are not the result of inspections in the field are to be reported in the narrative portion of the report.

See Section D., Inspection Category Definitions, for additional uniform reporting requirements for use and follow-up inspections.

D. Inspection Category Definitions

The eleven standard inspection categories listed on EPA Form 5700-33H are defined, for uniform reporting purposes, as follows:

It is understood that many states/tribes conduct inspections which are not specified as separate inspection categories on Form 5700-33H or defined in these guidelines. The state/tribe should consult with their Regional Office to determine which inspection categories most closely match such inspections. Inspections that do not fall within one of the eleven standard inspection categories of the form should be reported in the narrative portion of the accomplishments report.

Use Inspections

A use inspection may be initiated as an observation of an actual pesticide application or as an inspection following an application. This type of inspection is usually selected using a neutral or routine inspection scheme. Use inspections also include the investigation of the many facets of the use of a pesticide including storing, handling, mixing, loading, and disposal. Section 18 and section 24(c) use inspections will be included in this category for reporting purposes. Uniform reporting requirements are:

- Use inspections are differentiated from for cause inspections by the initial reason for the inspection.
- Use inspections are initiated without a reason to believe that a violation has occurred or is occurring.
- Use inspections remain use inspections even if a violation is encountered.
- A use inspection requiring multiple visits should be reported as only one use inspection even though many sites may be visited.

For example, in a use inspection all of the following sites may be visited: application site, adjoining property, dealer where the pesticide was purchased to review sales records, and place of business of certified applicator to review records. The visits to the dealer and applicator should not be reported as separate inspections if these visits were part of the use inspection.

1. Agricultural Use Inspections

Agricultural use inspections include the inspection of pesticide applications in

conjunction with the production of agricultural commodities as defined in 40 CFR section 171.2(a)(5) as follows:

The term “agricultural commodity” means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

2. Non-agricultural Use Inspections

Non-agricultural Use Inspections include the inspection of non-agricultural pesticide applications.

For Cause Inspections

A For Cause inspection is usually initiated in response to a complaint, damage report, referral, tips, etc. following a pesticide application. Section 18 and 24(c) follow-up inspections will be included in this category for reporting purposes. Due to the potential for harm to human and the environment, it is important that the inspector initiate For Cause inspections as soon as possible after the receipt of an alleged misuse.

Uniform reporting requirements are:

- For Cause inspections are differentiated from use inspections by the initial reason for the inspection because the inspector may be required to visit a number of sites, interview various persons and/or collect a number of samples.
- For Cause inspections are initiated when there is reason to believe that a violation has occurred or is occurring.
- For Cause inspections remain for cause inspections even if a violation is not detected.

3. Agricultural For Cause Inspections

Agricultural For Cause inspections are inspections of a suspected misuse of pesticides in conjunction with the production of agricultural commodities as defined in 40 CFR section 171.2(a)(5).

4. Non-agricultural For Cause Inspections

Non-agricultural For Cause inspections are inspections of suspected misuse of pesticides in all categories of non-agricultural applications.

5. Experimental-Use Inspections

An experimental-use inspection may be an actual observation of an application or a For Cause inspection of records to determine compliance with the experimental-use permit. All inspections must be conducted on site; telephone calls or correspondence reviews will not be counted as inspections.

6. Producer Establishment Inspections

A producer establishment inspection (PEI) is an inspection of an establishment where pesticides or devices are produced and held for distribution or sale, for the purpose of inspecting the facility's products and obtaining samples. While conducting PEIs, product labels, containers and records should be examined for compliance. Inspection of the books and records required by section 8 are also part of these inspections.

7. Marketplace Inspections

A marketplace inspection is an inspection conducted at the retail, distribution, wholesale, or user level for the purpose of determining product registration status, proper storage and display, any labeling violations, any product decomposition, and for collecting official samples. To be counted as an output, the marketplace inspection must be documented in accordance with the provisions set forth in the EPA Pesticides Inspection Manual.

8. Import Inspections

An import inspection is an actual inspection of a product being imported into the United States to determine whether the product is in compliance with FIFRA. Telephone calls and review of import papers in the inspector's office will not be counted as inspections.

9. Export Inspections

Export inspections are considered to be intensive section 8 books and records inspections that will involve the review and collection of a large number of documents and several affidavits

statements by regional/state inspector(s) from responsible company officials. Inspection activities will consist of three (3) parts: pre-inspection document collection and review; on-site inspection activities to review and obtain additional documents; and inspection report writing and organization of inspection documents.

An export inspection is an inspection directed toward those pesticides that are intended for export to determine whether they are prepared and packaged in accordance with the specifications and directions of the applicable foreign purchaser and consistent with the EPA Statement of Policy on the Labeling Requirements for Export Pesticides, Devices, and Pesticide Active Ingredients and the Procedures for Exporting Unregistered Pesticides.

10. Certified Applicator License and Records Inspections

This type of inspection is normally conducted at a pesticide applicator's place of business. The purpose of the inspection is to determine if: (1) the applicator is properly certified and/or licensed, (2) the required records are being maintained, (3) the applicator is applying pesticides only in those areas for which certification has been issued and (4) the records indicate that all applications have been made in compliance with all applicable laws and regulations.

Inspections of non-certified applicators, pest control operators, etc., for the purposes described above should also be reported in this category.

11. Restricted-Use Pesticide Dealer Records Inspections

This type of inspection is conducted on-site at dealers who sell restricted-use pesticides. The purpose of the inspection is to determine if: (1) the dealer is properly licensed or certified (if required) and maintaining the required records and (2) restricted-use pesticides are being sold only to certified applicators or other properly authorized persons by reviewing the dealer's records.

E. Sample Definitions

Physical samples refer to extracted volumes or other substances taken for analysis in determining product formulation, use dilution and residue concentrations.

Documentary samples are samples collected when physical samples of pesticides or devices are not collected. Generally they consist of a complete label, photographs of the pesticide container or the device and all labeling accurately representing what accompanied the formulation or device in the channels of trade.

Since the number of samples is also used for determining laboratory workload and productivity, documentary or non-physical samples should be differentiated so as not to be reported as sample projections on EPA Form 5700-33H. Documentary samples may be projected in the narrative portion to accompany EPA Form 5700-33H, if a state/tribe would like to do so. However, as stated above, only physical samples are required to be projected.

F. Sample Accomplishments

With respect to samples collected, both physical and documentary samples shall be reported.

G. Enforcement Action Category Definitions

Only those enforcement actions initiated as a result of an inspection should be reported on EPA Form 5700-33H.

It is understood that many states/tribes initiate enforcement actions which are not specified as one of the standard categories for enforcement action on EPA Form 5700-33H or defined in these guidelines. The state/tribe should consult with their Regional Office to determine which reporting categories most closely match such enforcement actions. Enforcement actions not readily falling within one of the ten standard categories on the form should be reported in the enforcement action category **“Other Enforcement Actions”** and **described in the narrative portion of the accomplishments report.**

The eleven standard categories of enforcement actions listed on EPA Form 5700-33H are defined, for uniform reporting purposes as follows:

1. Civil Complaints Issued

Civil Complaints include any written notice proposing a monetary penalty for a violation. These actions should be reported during the period in which they are issued to the respondent.

2. Criminal Actions Referred

Criminal Actions are those legal actions pursued in a court of law. These actions should be reported during the period in which the case is referred to the judicial system (e.g., State Attorney General, District Attorney or County Prosecutor).

3. Administrative Hearings Conducted

An Administrative Hearing is when an alleged violator is required to appear before a state, tribal or federal hearing officer to explain why the violation occurred. For purposes of the 5700-33H form, states/tribes should only report administrative hearings that are not associated with other enforcement actions. These actions should be reported during the period in which the hearing is conducted.

4. License/Certificate Suspension

5. License/Certificate Revocation

6. License/Certificate Conditioning or Modification

These are usually administrative actions taken to further restrict the use of restricted-use pesticides by certified applicators by suspending, revoking or modifying the terms of the applicator's license or certification.

7. Number of Warnings Issued

To be counted, warnings must be a **written notification** pointing out the violation(s) and placing the recipient on notice that further violation may result in additional enforcement action. Warnings should be reported during the period in which the warning was issued.

8. Stop-Sale, Seizure, Quarantine, or Embargo

All official written orders for removing products in violation from sale or use should be reported in this category.

9. Cases Forwarded to EPA for Action

This includes all inspection files that document violations of FIFRA and are forwarded to EPA for enforcement action. Inspection reports of all inspections conducted using EPA credentials must be forwarded to EPA.

10. Other Enforcement Actions

Any other written, verifiable enforcement action initiated by the state, tribe or federal agency that is not comparable to one of the above enforcement action categories.

11. Number of Cases Assessed Fines

This figure indicates the number of enforcement cases resulting in the assessment of a monetary fine (e.g., civil complaint settlements, criminal court actions, or administrative hearing orders).

H. Narrative

Accomplishment Reports should be accompanied by a narrative portion as described below:

1. Inspections Conducted

Inspections which do not fall within one of the eleven standard inspection categories should be reported in the narrative.

2. Enforcement Accomplishments

Enforcement actions not readily falling within one of the standard categories on the form should be reported in the enforcement action category “Other Enforcement Actions” and described in the narrative portion.

Enforcement actions which are not the result of inspections in the field may be reported in the narrative.

Some examples of what would be included under “other enforcement actions” include the following; advisory letters, agreements on remedial action, notices of intent to sue, consent agreements, reports of substandard treatments, treatment correction notices, and stop work order notice.

A “field notice” would be included under the category of “other enforcement actions” (as opposed to the “warning” category) only if it does not meet the definition of a “warning” as described in item number 7.